SINGLE APPENDIX

Supreme Court of the United States

October Term, 1972

No. 72-887

AMERICAN PARTY OF TEXAS, ET AL, *Appellants*,

v.

BOB BULLOCK, Secretary of State of Texas, *Appellee*,

No. 72-942

ROBERT HAINSWORTH, *Appellant*,

v.

MARK WHITE, JR., Secertary of State of Texas, *Appellee*

Appeal From The United States District Court For The Western District of Texas

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Alpha Law Brief Co., One Main Plaza, No. 1 Main St., Houston, Texas 77002

No. 72-887—Docketed December 15, 1972

No. 72-942—Docketed December 30, 1972

Jurisdiction Noted March 5, 1973

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IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

CIVIL NO. MO-72-CA-50

THE AMERICAN PARTY OF TEXAS, et al,
Petitioners,

v.

HONORABLE BOB BULLOCK,
Secretary of State of Texas,
Defendant.

COMPLAINT

TO THE SAID HONORABLE COURT:

I.

Petitioners, THE AMERICAN PARTY OF TEXAS, is a political party organized in Texas; HOMER FIKES, of Stonewall, Gillespie County, Texas, announced candidate for Governor of the State of Texas, subject to nomination by State Convention of the members of THE AMERICAN PARTY OF TEXAS, and H. D. "HUB" HORTON, of Odessa, Ector County, Texas, announced candidate for Ector County Commissioner, Precinct 1; and ROBERT FRIAS, of Odessa, Ector County, Texas, qualified voter, bring this Complaint as a class action for Injunction and for Declaratory Judgment against the Honorable BOB BULLOCK, Secretary of State of the State of Texas, having his office in the Capitol Building, Austin, Texas, where he may be served with process of citation herein.

II.

This action arises under the Constitution of the United States, including the guarantee of freedom of political association of the First Amendment, the due process and equal protection clauses of the Fourteenth Amendments and the Fifteenth Amendment.

III.

This is a proceeding for Injunction and for Declaratory Judgment pursuant to 28 U.S.C. § 2201 and § 2202. This Court has jurisdiction of this action under 42 U.S.C. § 1971, et seq., 42 U.S.C. § 1983, 28 U.S.C. § 1343 (3)(4), and Rule 23 of the Federal Rules of Civil Procedure.

IV.

Petitioners bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on their own behalf and on behalf of all other members of their class who choose to participate as voters of THE AMERICAN PARTY OF TEXAS, or who choose to participate as voters of any other poltical party. This class consists of all those voters in the State of Texas who are prevented from voting for persons of their choice in County, District, State and Federal elections because of the statutory prohibition of Article 13.45 (2)* preventing by its onerous provisions the candidacy of those persons who choose to submit themselves for election on a platform other than that prescribed by the Republican and Democratic party conventions and which statute prevents

* Omitted in printing—Jurisdictional Statement—Appendix D, Pages 46-48.

the effective free vote by those persons who choose to vote for candidates other than those nominated by the Primaries of the Republican and Democrat parties, all in violation of the constitutional rights of Plaintiffs and their class as guaranteed by the First, Fourteenth and Fifteenth Amendments to the United States Constitution, the Civil Rights Act of 1871, and the 1965 Voting Rights Act.

As to the class, Plaintiffs, FIKES, HORTON and FRIAS, represent:

1. The class is so numerous that joinder of all its members is impractical.

2. There are questions of law and fact common to the class.

3. The claims of Plaintiffs, FIKES, HORTON and FRIAS, are typical of the claims of the class.

4. Plaintiffs, FIKES, HORTON and FRIAS, will fairly and adequately protect the interest of the class; and

The statutory requirements are generally applicable to the class, thereby making appropriate final relief with respect to the class.

V.

V.A.C.S. Art. 13.45 (2) of the Texas Election Code is unconstitutional in violation of the First, Fourteenth and Fifteenth Amendment of the Constitution of the United States of America in each of the following particulars:

1. It makes no provisions for voter participation by absentee voting in the nomination process.

2. It prevents voter participation by absentee voting for nomination.

3. It prevents voter participation by voting in the primary of a major party.

4. The limitation of the circulation of the Petition until after the date set for the general primary election is discriminatory as contrasted to the statutory provision for absentee voting more than 20 days prior to the primary election day.

5. It requires a prohibitive timing deadline for certification of participants in precinct conventions.

6. It requires a prohibitive timing deadline for the circulation and execution of the Petition for nomination.

7. It limits effective participation to a majority organized party by unreasonably, capriciously and arbitrarily restricting the rights of the voters in the election process.

8. It is not to promote a compelling state interest.

9. It conflicts with the intent of the legislature that the will of the people shall prevail and that true democracy shall not perish in the Lone Star State.

10. It has as its sole purpose the restriction of voters' participation in the election process.

11. The requirement of the certificate of the officer administering the oath is unnecessarily burdensome in addition to the normal requirements of voter participation.

12. The wording of the oath excluding participation in primary voting is unnecessarily burdensome and in addition to the standard requirements for participation in a party primary election.

13. The requirement that the Petition requesting the names of the parties nominees to be printed on the general election ballot be submitted within 20 days after the date for holding the parties State Convention has no public purpose and is arbitrarily and unreasonably prejudicial to the nomination of candidates for position on the November general election ballot.

14. The deadline for the nominating petition is arbitrary, capricious and unreasonable being more than 90 days prior to the statutory date of certification of the nominees for the printing of the general election ballot.

15. The limitation of the signers of the Petition to those persons who have not voted in a party primary election or participated in a convention of any other party deprives those persons who signed the Petition of equal protection of the law in that they are prevented from participating in the nomination process and are deprived of full participation in the election process as prescribed by the United States Constitution.

16. The wording is too vague, indefinite and uncertain which prohibits compliance.

17. It is inviduously discriminatory as to any minority party.

18. The arbitrary, capricious and unreasonable requirements for ballot position imposes inviduously discriminatory qualifications for nominations.

VI.

The intentional discrimination practiced by the Texas Legislature controlled by the majority Democratic party in the State of Texas, enacting prohibitive restrictions

against a minority party as enacted in V.A.C.S., Art. 13.45 (2) is repeatedly demonstrated by the enactment of the McKool-Stroud Primary Financing Law of 1972, 62nd Legislature—2nd Called Session—S.B. No. 1,* which is unconstitutional in each of the following particulars:

1. The law specifically includes only V.A.C.S., art. 13.02, 13.03, Texas Election Code, which is discriminatory against all other statutory nomination processes.

2. It prohibits participation by the minority party nominating by convention as further limited by V.A.C.S. art. 13.45 (2).

3. It is violative of the due process and equal protection of the law provisions of the Fourteenth Amendment to the United States Constitution.

4. It is discriminatory on its face in that it limits participation to political parties casting 200,000 or more votes at the next preceding gubernatorial election.

5. The appropriation by the Texas Legislature of tax receipts by virtue of levy on real and personal property located in the State of Texas, is discriminatory against the rights of all persons and citizens who are not members of the political party known as the Democratic party and Republican party of the State of Texas.

6. The appropriation of public tax money to effect the nomination of candidates for certain political parties as opposed to the costly nomination by the statutory requirement of excessive expenditures by other party organiza-

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* Omitted in printing—Jurisdictional Statement—Appendix D, Pages 51-57.

tions to nominate its candidate is obviously discriminatory and a denial of equal protection of the law.

7. It purports to authorize Defendants under color of law to create and maintain a monopoly for the benefit of the Democratic and the Republican party in the State of Texas, and to exclude other political parties by reason of financing and as such constitutes a denial of equal protection and due process.

8. It purports to appropriate public tax funds for the benefit of the Democratic and the Republican political parties only, specifically excluding participants under V.A.C.S. art. 13.45 (2).

9. The tax-funds financing of the major political party primaries to the exclusion of the nomination of candidates by minority parties is discriminatory in violation of the Fourteenth Amendment of the United States Constitution.

10. The financing of majority party primaries only is not public purpose.

11. It is unconstitutional in that the power of the Legislature to establish minimum requirements for holding primary elections does not empower the Legislature to use public funds to meet the established minimum requirements.

12. It is too indefinite, uncertain and vague to be capable of enforcement and consequently is inviduously discriminatory on its face in that the requirement of the party loyalty pledge confirming the creed of the voters to participate in the major party primary elections is discrimination based on age, sex, creed or national origin.

13. It is too indefinite, uncertain and vague as an authorization for the expenditure of tax money in that

the County Chairman of the participating major political party is the sole judge of the "amount actually spent in holding the party elections for the year".

14. It discriminates among the counties of the State of Texas based solely upon the certification of costs without limitation or corroboration as to the number of participating voters as compared to resident eligible voters and without limitation as to State provided facilities for primary voting and without valid corroboration of the purposes for the expenditure.

15. It is violative of the V.A.T.S. art. 13.45 and 13.45(a) which provide for nominations by conventions and/or primary elections by parties casting under 200,000 votes for the gubernatorial candidate at the next preceding general election.

16. The appropriation of public funds for the holding of particular party primaries as contrasted to the appropriation for public funds for the nomination of candidates by all political parties in accordance with statutory requirements effectively destroys the constitutionality of this appropriation of public funds as a public purpose.

17. It is unconstitutional in that it is a perfect example of profligacy.

VII.

Petitioners urge the Court to enjoin the Secretary of State from enforcing the June, 1972, deadline for the submission of sworn petitions for nomination.

VIII.

Petitioners must have their legal rights determined be-

fore the time to print the ballots for the general election as required by statute. That Petitioners have no plain, speedy or adequate remedy at law by appeal or otherwise and the constitutionality of the matters of law and the fact questions to be determined are of the greatest public purpose.

IX.

Petitioners would further show that the party candidates nominated by THE AMERICAN PARTY OF TEXAS are not ineligible to hold public office in the State of Texas, and to prevent them from having their names placed on the Official General Election Ballot in November, 1972, elections is to deprive them of basic constitutional rights in violation of the First, Fourteenth and Fifteenth Amendments to the United States Constitution.

To deny THE AMERICAN PARTY OF TEXAS candidates a place on their general election ballot in November, 1972, would be to deprive citizens desiring to vote for said candidate the right to cast a meaningful and effective vote for the candidate of their choice and to deprive them of a fundamental right guaranteed by the United States Constitution.

X.

Petitioners on information and belief allege that the requirements of the numbers of names by precinct convention and/or Petition, the limitation of the signers of the Petition to persons who have not voted in either the Republican or Democrat primary, the limitations of time to the circulation of such Petition to an arbitrary and unreasonable date expiring in June, 1972, more than

three (3) months prior to the stautory date for the printing of general election ballots, the imposition of the cost of the petitions on the candidates for nomination as contrasted to the appropriation of public funds for payment of the nomination of candidates in the two major political parties, in each and every instance deprive Petitioners of substantive due process under the Fifth and Fourteenth Amendments of the United States Constitution.

XI.

Petitioners further allege that the arbitrary, capricious, unreasonable, and prohibitive restrictions of Article 13.45(2) of the Texas Election Code directed to each and every political party not casting 200,000 votes for the gubernatorial candidate at the next preceding general election while conversely providing for the nomination of candidates by the Republican and Democrat party by the appropriation of unlimited and excessive tax money denied Petitioners equal protection of the laws under the Fourteenth Amendment to the United States Constitution.

XII.

Petitioners further allege that Defendants have disenfranchised Petitioners and their class by denying them the right to vote for the candidate of their choice in violation of the 1965 Voting Rights Act, 42 U.S.C. § 1971 (a)(2) (A)(B).

XIII.

Unless this Court issues a temporary restraining order prohibiting the Secretary of State of the State of Texas

from invoking V.A.C.S. art. 13.45(2) of the Texas Election Code, Petitioners will suffer irreparable harm in that they and all other members of their class shall be excluded from their participation in the electorial process on the County, District, State and National levels in the general election, including the right to participate in the election of the President of the United States.

WHEREFORE Petitioners respectfully pray that this Honorable Court:

1. Enter its Order finding jurisdiction in this Court as herein alleged.

2. Issue a temporary restraining order prohibiting the Secretary of State of the State of Texas from invoking V.A.C.S. art. 13.45(2) of the Texas Election Code.

3. Invoke a three judge Federal Court to test the constitutionality of V.A.C.S. art. 13.45(2) and the McKool-Stroud Primary Financing Law of 1972.

4. Declare V.A.C.S. art. 13.45(2) of the Texas Election Code to be unconstitutional in its entirety.

5. Declare that V.A.C.S. art. 13.45(2) is unconstitutional in each of the following particulars:

a. The requirement of the number of names signing the Petition.

b. The requirement that the names be signed under oath.

c. The limitation that the person signing the Petition shall not have voted in any primary election or participated in any convention held by any other political party.

d. That the Petition may not be circulated for signatures until after the date set for the general primary election.

e. That the date of the filing of the list of participants in precinct convention and petition requesting names of the parties' nominees be printed on the general election ballot within 20 days after the date for holding the party state convention.

6. Declare the McKool-Stroud Primary Financing Law of 1972, is unconstitutional in its entirety.

7. Enjoin the exclusion of the nominees of THE AMERICAN PARTY OF TEXAS State Convention from the general election ballot.

8. For such other and further relief to which Plaintiffs may be entitled under law and in equity and for which they shall ever pray.

/s/ GLORIA T. SVANAS
Gloria T. Svanas
Attorney for Petitioners

(JURAT OMITTED IN PRINTING)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

(TITLE OMITTED IN PRINTING)

DEFENDANT'S ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Bob Bullock, Secretary of State of Texas, Defendant in the above styled and numbered cause, represented herein by Crawford C. Martin, Attorney General of Texas, and in reply to Plaintiffs' Complaint files this his answer, and would respectfully show the Court as follows:

I.

Plaintiffs' Complaint fails to state a cause of action upon which relief may be granted.

II.

Plaintiffs' Complaint fails to state a substantial federal question.

III.

A. The Defendant denies the allegations contained in Paragraphs II, III, V, VI, VII, VIII, X, XI, XII, and XIII of Plaintiffs' Complaint.

B. The Defendant, Bob Bullock, admits that he is Secretary of State of the State of Texas and has his office in the Capitol Building, Austin, Texas, but as to the remaining provisions of Paragraph I of Plaintiffs' Complaint, the Defendant is without sufficient knowledge or information to either admit or deny the same, and therefore the same should be considered as denied.

C. The Defendant denies the allegations contained in the second sentence of the first paragraph of Paragraph IV of Plaintiffs' Complaint, and as to the remaining allegations contained in Paragraph IV of Plaintiffs Complaint, the Defendant has neither knowledge nor information sufficient to either admit or deny said allegations and therefore the same should be taken as denied.

D. The Defendant does not possess knowledge or information sufficient to admit or deny the allegation contained in Paragraph IX that ". . . the party candidates nominated by the American Party of Texas are not ineligible to hold public office in the State of Texas . . .", and therefore the same should be considered as denied, but as to the remaining allegations contained in Paragraph IX of Plaintiffs' Complaint, the Defendant denies.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that the relief sought by the Plaintiffs be in all things denied.

CRAWFORD C. MARTIN
Attorney General of Texas

PAT BAILEY
Pat Bailey
Assistant Attorney General

P. O. Box 12548
Capitol Station
Austin, Texas 78711
Attorney For Defendant
Bob Bullock

(Certificate Of Service Omitted In Printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

CIVIL NO. MO-72-CA-50

(TITLE OMITTED IN PRINTING)

TEMPORARY RESTRAINING ORDER

On this the 14th day of June, 1972, came on to be considered Petitioners' Complaint and demand for temporary restraining order; came the Petitioner, THE AMERICAN PARTY OF TEXAS, by its State Chairman, H. D. "Hub" Horton, and the Petitioners, H. D. "Hub" Horton, Robert Frias and Homer Fikes, in person and by their attorney of record, Gloria T. Svanas, and came the Defendant, ROBERT BULLOCK, Secretary of State of Texas, by Pat Bailey, Assistant Attorney General of Texas; and the Court having considered the pleadings and having heard the argument of counsel is of the opinion that Petitioners should be granted a Temporary Restraining Order against the Defendant restraining the Defendant from refusing to accept petitions of Petitioners to be obtained and filed by Petitioners pursuant to Article 13.45 (2) between June 30, 1972, and September 1, 1972;

It is therefore ORDERED, ADJUDGED and DECREED that Defendant, BOB BULLOCK, Secretary of Texas be and he hereby is temporarily restrained from refusing to accept and file nominating petitions pursuant to Art. 13.45 (2) obtained by Petitioners between June 30, 1972, and September 1, 1972.

It is further ORDERED, ADJUDGED and DECREED

that the Petitioners are not relieved from any further duties, responsibilities or requirements otherwise required by the Texas Election Code or Article 13.45 thereof except as hereabove ordered.

It is further ORDERED, ADJUDGED and DECREED that those petitions obtained and filed by the Petitioners between June 30, 1972 and September 1, 1972, shall only be considered valid for the purpose of complying with Article 13.45 of the Texas Election Code in the event the Petitioners prevail upon the merits in this proceeding.

To all of which Defendant duly excepted in open Court.

D. W. SUTTLE
United States District Judge

APPROVED AS TO FORM:

GLORIA T. SVANAS
Gloria T. Svanas
Attorney for Petitioners

PAT BAILEY
Pat Bailey
Attorney for Defendant

(Seal)

A true copy of the original, I certify.
DAN W. BENEDICT, Clerk
By: SHIRLEY JONES, Deputy.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

CIVIL NO. MO-72-CA-50

(TITLE OMITTED IN PRINTING)

MOTION FOR ANCILLARY RELIEF

TO SAID HONORABLE COURT:

NOW COME, Petitioners, THE AMERICAN PARTY OF TEXAS, H. D. "Hub" Horton, Robert Frias, and Homer Fikes, and make this Motion for Ancillary Relief in the form of a Temporary Restraining Order and Permanent Injunction against the Defendant, BOB BULLOCK, Secretary of State of Texas, and in support of such Motion would respectfully show to the Court as follows:

I.

Petitioners would show to the Court that the Defendant, BOB BULLOCK, Secretary of State of Texas, is seeking additional appropriations from the Legislature of the State of Texas, to pay commitments under color of law of the McKool-Stroud Primary Financing Law of 1972, 62nd Legislature, 2nd Called Session—Senate Bill No. 1 (attached to Plaintiffs' Original Complaint as Exhibit "B").*

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* Omitted in printing—Jurisdictional Statement—Appendix, Pages 51-57.

II.

Petitioners would further show to the Court that they in their capacities as candidates and as taxpayers of the State of Texas will suffer immediate and irreparable harm if payments are made pursuant to the McKool-Stroud Primary Law of 1972, to the County Chairmen of the Democratic and Republican parties. (TOOMER V. WITSELL, 334 U.S. 385, 92 L. Ed. 1460, 68th S. Ct. 1156, Reh. Den.) Petitioners would further show that the payment of monies by the Defendant to the County Chairman of the Democratic and Republican parties in the State of Texas would result in great and irremediable injury to personal rights of Petitioners which injury is real and imminent in that the Texas Legislature is now sitting in Special Session and that the appropriation made under color of law of the McKool-Stroud Primary Financing Law of 1972 is insufficient to meet the cost of the party primary held by the Democratic and Republican parties and that the Defendant has requested additional funds from the Special Session of the Texas Legislature. Petitioners would further urge the Court that there is no adequate remedy at law in that the monies to be spent by the Defendant, BOB BULLOCK, under color of the McKool-Stroud Primary Financing Law of 1972, are extraordinary and excessive expenditures by the Defendant and are not recoverable by Petitioners from the payees if the Defendant should not be restrained from making such payments under color of the McKool-Stroud Primary Financing Law of 1972.

III.

Petitioners would further urge the Court that Petitioners Complaint heretofore filed herein alleges that the McKool-

Stroud Primary Financing Law of 1972 is unconstitutional and that Defendant should be restrained from making any payments under color of such law until the constitutionality of such law and the legality of such payments have been determined by this Honorable Court sitting as a three-Judge District Court.

WHEREFORE, Petitioners pray that after due notice to the Defendant that this Motion be set for hearing by this Honorable Court at the earliest possible hour and that this Honorable Court issue a Temporary Restraining Order prohibiting the Defendant, BOB BULLOCK, Secretary of State of Texas, from making any payments, disbursements or authorizations pursuant to the McKool-Stroud Primary Financing Law of 1972, pending hearing on the merits before the three-Judge Federal District Court testing the constitutionality of the McKool-Stroud Primary Financing Law of 1972; and further, upon the determination on the merits that the McKool-Stroud Primary Financing Law of 1972, is unconstitutional and void, that such Temporary Restraining Order be made a permanent injunction; and for such other and further relief to which Petitioners may be entitled and for which they shall ever pray.

GLORIA T. SVANAS
Gloria T. Svanas
Attorney for Petitioners

(JURAT OMITTED IN PRINTING)

(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

UNITED STATES DISTRICT COURT
WESTERN DISRICT OF TEXAS
MIDLAND-ODESSA DIVISION

(TITLE OMITTED IN PRINTING)

ORDER DENYING MOTION FOR
ANCILLARY RELIEF

On this the 16th day of June, 1972, came before the Court petitioners' Motion for Ancillary Relief, filed herein on this date, wherein petitioners pray that the Court "issue a Temorary Restraining Order prohibiting the defendant, Bob Bullock, Secretary of State of Texas, from making any payments, disbursements or authorizations pursuant to the McKool-Stroud Primary Financing Law of 1972, pending hearing on the merits before the three-Judge Federal District Court testing the constitutionality of the McKool-Stroud Primary Financing Law of 1972; and further, upon the determination on the merits that the McKool-Stroud Primary Financing Law of 1972, is unconstitutional and void, that such Temporary Restraining Order be made a permanent injunction; and for such other and further relief to which petitioners may be entitled."

The Court, having duly considered the same and the relief heretofore granted petitioners, finds that the Motion for Ancillary Relief should be DENIED.

IT IS, ACCORDINGLY, SO ORDERED.

Entered this 16th day of June, 1972.

D. W. SUTTLE
United States District Judge

IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

(TITLE OMITTED IN PRINTING)

MOTION FOR HEARING

TO THE HONORABLE JUDGE THORNBERRY, JUDGE SUTTLE and JUDGE WOOD:

NOW COME the Petitioners and in support of their Motion for Hearing would respectfully show the Court:

I.

On May 31, 1972, Petitioners filed their Application herein for Injunction and to test the unconstitutionality of two (2) Texas State statutes, specifically, Election Code art. 13.45 (2) V.A.T.S., and the McKool-Stroud Primary Financing Law of 1972. On June 19, 1972, The designation and composition of the three-judge district Court was named.

II.

Petitioners in their Complaint and supported by their Memorandum of Authority filed herein on June 7, 1972, urge this Honorable Court for immediate relief from the unreasonable and capricious requirements for ballot position under Election Code art. 13.45 (2) and would further show this Court that such requirements become arbitrarily exclusive by such state statute on June 30, 1972.

III.

Petitioners further urge the Court that unless Bob Bullock is enjoined by this Court from disbursements under the unconstitutional state statute entitled McKool-Stroud Primary Financing Law of 1972, Petitioners and all members of their class will suffer irreparable and immediate harm against their property rights.

IV.

Petitioners as nominees and voters of The American Party of Texas are necessarily spending thousands of dollars daily in their continuing efforts to attempt to comply and fulfill the unreasonable and unconstitutional requirements for ballot position as required by Election Code art. 13.45 (2) V.A.T.S. and that unless an injunction be immediately issued by this Court that Petitioners will suffer continuing and irreparable losses of time and money by reason of such unconstitutional requirements.

V.

Petitioners respectfully urge this Court to give the Application of Petitioners precedence and that such Application be assigned for hearing before said Honorable Court on Friday, June 30, 1972, at 10:00 A.M. at the U. S. District Court, 211 North Colorado St., Midland, Texas, as the earliest practicable day (28 U.S.C.A. 2284 (4)) subject to five (5) days notice to the Governor and Attorney General of the State of Texas. (28 U.S.C.A. 2284 (2)).

WHEREFORE, Petitioners pray that such Order for Hearing be issued and that upon such Hearing such statutes, namely, Election Code 13.45 (2) V.A.T.S. and the

McKool Stroud Primary Financing Law of 1972 be each held to be unconstitutional in its entirety and that permanent injunction issue; and for such other and further relief to which Petitioners shall be entitled.

GLORIA T. SVANAS
Gloria T. Svanas
Attorney for Petitioners

(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

(TITLE OMITTED IN PRINTING)

ORDER DENYING MOTION FOR HEARING

On this the 26th day of June, 1972, came to the attention of the Court petitioner's motion for injunction hearing on Friday, June 30, 1972, at 10:00 a.m., at the United States District Court, 211 North Colorado, Midland, Texas, and the Court, after a long-distance conference telephone call with Circuit Judge Homer Thornberry, United States District Judges Jack Roberts, John H. Wood, Jr., and D. W. Suttle participating, finds that conflicting appointments prevent the Court from granting the hearing requested; further, that there are a number of other cases pending in the State of Texas involving the same issues as presented in this case and that consolidation of the several suits is indicated; that such fact will be made known to Honorable John R. Brown, Chief Judge of the United States Court of Appeals for the Fifth Circuit, for an order authorizing consolidation of such cases so that one trial for all the cases may be scheduled, including dates for submission of trial briefs and also for a trial date on the merits that can be met by the judges assigned to hear the consolidated cases in the interest of judicial economy and an efficient disposition of the issues on the merits.

All requests of the petitioner for immediate relief by nature of temporary restraining order or temporary injunction is consequently DENIED.

The consolidated cases will be set down for trial on the merits at the earliest practicable date as indicated.

IT IS, ACCORDINGLY, SO ORDERED.

Entered this 26th day of June, 1972.

D. W. SUTTLE
United States District Judge

A true copy of the original, I certify.
DAN W. BENEDICT, Clerk

By: SHIRLEY JONES, Deputy.

(Seal)

IN THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

C. A. No. 72-H-990

TEXAS NEW PARTY, ET AL, Plaintiffs,
v.
PRESTON SMITH, Governor, and BOB BULLOCK, Secretary of State, Defendants.

(1) District Judge: Honorable D. W. Suttle
Western District of Texas
(2) District Judge: Honorable John H. Wood, Jr.
Western District of Texas
(3) Circuit Judge: Honorable Homer Thornberry
(4) Date of Order: July 28, 1972

All Judges having consented, the application of the Honorable Allen B. Hannay, the requesting Judge, for designation of a three-judge court, is to be consolidated for submission and hearing with the following cases now pending in the United States District Court for the Western District of Texas:

No. W-72-CA-37 - Dunn, et al v. Bullock
No. MO-72-CA-50 - American Party of Texas, et al v. Bob Bullock
No. SA-72-CA-158 - Raza Unida Party, et al v. Bob Bullock

As Chief Judge of the Fifth Circuit, I hereby designate Honorable D. W. Suttle and Honorable John H. Wood, Jr., United States District Judges of the Western District of Texas and Homer Thornberry, United States Circuit Judge, as members of and to constitute the Court to herein determine the action. Whether separate or consolidated decrees are to be entered will be left to the determination of the three-judge court.

This designation and composition of the three-judge court is not a prejudgment, express or implied, as to whether this is properly a case for a three-judge rather than a one-judge court. This matter is best determined by the three-judge court as this enables a simultaneous appeal to the Court of Appeals and to the Supreme Court without the delay, awkardness and administrative insufficiency of a proceeding by way of mandamus from either the Court of Appeals, the Supreme Court, or both, directed against the Chief Judge of the Circuit, the presiding District Judge, or both. The parties will be afforded the opportunity to brief and argue all such questions before the three-judge panel either preliminarily or on the trial of the merits or otherwise as that Court thinks appropriate.

/s/ JOHN R. BROWN
John R. Brown
Chief Judge
Fifth Circuit

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

(TITLE OMITTED IN PRINTING)

STIPULATIONS OF FACT

TO THE HONORABLE JUDGES OF SAID COURT:

COME NOW the Plaintiffs and the Defendants in Cause No. MO-72-CA-50, American Party of Texas, et al. v. Bob Bullock, and through their respective attorneys of record, stipulate to the following facts for the purpose of this litigation, and agree that the same may be introduced and used as evidence herein.

1. That all of the factual allegations contained in Paragraph I of the American Party of Texas Complaint are true and correct.

2. The number of the registered members of the American Party of Texas in 1968 was 91,958.

3. The number of votes cast in Texas in 1968 for the presidential nominee of the American Party of Texas was 584,269.

4. That on September 1, 1971, the American Party of Texas filed with the Secretary of State its declaration of intention to nominate candidates by convention.

5. That on February 22, 1972, the Executive Committee of the American Party of Texas certified to the Secretary of State the names of persons who had filed with the party on or before February 7, 1972, to be candidates for the party's nominations.

6. That on March 24, 1972, the party rules of the American Party of Texas were filed with the Secretary of State.

7. That on June 29, 1972, the American Party of Texas filed with the Secretary of State the minutes of its state convention and the names of the nominees selected by the party.

8. That on June 29, 1972, the American Party of Texas filed with the Secretary of State the lists of qualified voters who participated in the party's precinct conventions, a total of 2,732, and along with the above lists filed petitions signed by 5,096 qualified voters, who urged that the party's nominees be placed on the ballot for the general election.

9. That the attached Xerox copies of vote tabulations for the Republican Party primaries as of May 6, 1972, are true and correct.

10. That the Democratic Party held a party primary in each and every county of Texas.

11. That the attached Xerox copies of press releases by Bob Bullock, Secretary of State, of June 29, 1972 and August 2, 1972, represent computations made by the office of the Secretary of State.

12. That on August 31, 1972, the State Chairman of the American Party certified the filing of 17,678 names

to the Secretary of State urging the nominees of the American Party to be placed on the general election ballot.

GLORIA T. SVANAS
Gloria T. Svanas

Attorney for Plaintiff

CRAWFORD C. MARTIN
Attorney General of Texas

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P. O. Box 12548
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Austin, Texas 78711

Attorneys For Defendant

(Certificate Of Service Omitted In Printing)

NO. 72-942

ROBERT HAINSWORTH, Appellant

v.

MARK WHITE, JR., SECRETARY OF STATE OF TEXAS, Appellee

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

NO. A 72 CA 111

RELEVANT DOCKET ENTRIES

8-23-72 1. Original Petition Filed.

9-7-72 5. 3-Judge Hearing on Petitions attacking constitutionality of the election code of the State of Texas. * * Arguments of counsel heard and completed. Pltff Hainsworth to file brief by Monday, September 11, 1972, and to mail a copy to Sec. of State. Case taken under advisement.

9-11-72 6. Brief of Petitioner filed (copies to 3 Judges)

9-14-72 7. Defts Motion to Dismiss, filed (copies 3 Judges)

9-21-72 9. Memorandum and Order filed denying relief sought by Plaintiff and granting Defendant's Motion (for Summary Judgment) filed.

9-29-72 11. Motion for Rehearing, filed (copy to 3 Judges).

9-29-72 12. Brief in Support of Motion for Rehearing filed, Copy to 3 Judges.

9-29-72 13. Notice of Motion of Defendant, filed. Copy to three Judges.

10-3-72 15. Order Denying Motion for Rehearing filed (3-Judge—Thornberry, Suttle, Wood) (Copies mailed to Plaintiff, 3 Judges & Attorney General by San Antonio Clerk's office)

10-4-72 16. Respondents' Opposition to Motion for Rehearing, filed.

11-2-72 20. Notice of Appeal to the Supreme Court of the United States filed.

RELEVANT PLEADINGS

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS,
AT AUSTIN

CIVIL ACTION NO. A 72 CA 111

ROBERT HAINSWORTH,
Petitioner

v.

BOB BULLOCK, SECRETARY OF STATE,
STATE OF TEXAS,
Respondent

PETITION FOR PRELIMINARY INJUNCTION

TO SAID HONORABLE COURT:

Petitioner in his behalf and on behalf of others similarly situated, states in his petition for injunctive relief, as follows:

I.

Jurisdiction is conferred on this Court by 28 USC Section 1343 (3).

II.

Petitioner is a native citizen of the United States and of the State of Texas, and is a resident and citizen of Harris County, Texas.

Respondent is the Honorable Bob Bullock, Secretary of State of the State of Texas, with his office and official residence being at the seat of government, the State Capitol, in Austin, Travis County, and he may be served a copy of this Petition for Preliminary Injunction by serving him at his office of Secretary of State in the State Capitol Building, in Austin, Travis County, Texas.

That the Honorable Crawford Martin is the Attorney General of the State of Texas, with his office being in the Supreme Court Building in Austin, Texas, and he may be served a copy of the Petition For Preliminary Injunction, for his knowledge, as he is the Attorney General of the State of Texas.

III.

Challenge is made to the constitutionality of Art. 1350, Election Code, V.A.T.S., which provides in part as follows:

"The name of a nonpartisan or independent candidate may be printed on the official ballot in the column for independent candidates, after a written application signed by qualified voters addressed to the proper officer as herein provided, and delivered to him within thirty days after the second primary election day, as follows:

If for an office to be voted for throughout the State, the application shall be signed by one per cent of the entire vote of the state cast for Governor at the last preceding general election, and shall be addressed to the Secretary of State.

If for a district office in a district composed of more than one county, the application shall be signed by three

per cent of the entire vote cast for Governor in such district at the last preceding general election, and shall be addressed to the Secretary of State.

If for a district office in a district composed of only one county or part of one county, the application shall be signed by five per cent of the entire vote cast for Governor in such district at the last preceding general election, and shall be addressed to the Secretary of State.

* * * * * *

Notwithstanding the foregoing provisions, the number of signatures required on an application for any district, county or precinct office need not exceed five hundred.

* * * * * *."

Particular challenge is made to the constitutionality of the provision above quoted, which requires that if for a district office in a district composed of only one county or part of one county, the application shall be signed by five per cent of the entire vote cast for Governor in such district at the last preceding general election; but the number of signatures required on an application for any district office need not exceed five hundred.

IV.

That the petitioner filed his application to have his name placed on the official ballot for the general election to be held on November 7, 1972, together with his Affidavit of Intent to run as an Independent Candidate for the office of State Representative, District 86, in accordance with Art. 13.47a, Section 3.

That the petition to get the name of Robert Hainsworth on the ballot as an independent candidate was begun to

be circulated on June 5, 1972, and within thirty days after the second primary election day, on July 3, 1972, petitioner brought such application to get the name of Robert Hainsworth on the ballot as an independent candidate for the general election, 1972, to the office of the Secretary of State.

The petitioner did not have five hundred signatures to such application, nor five per cent of the entire vote cast for Governor in such district at the last preceding general election, but did have over three hundred signatures, Three Hundred Twenty-Two signatures by the count of the petitioner. As over three hundred qualified voters had signed the application to get the name of Robert Hainsworth on the ballot for the general election on November 7, 1972, then, if his name was on such ballot, each of the signers of the application, as well as other qualified voters would have the opportunity to vote for him in the general election in November.

Petitioner presented a written request for an extension of time in which to obtain signatures to application, to the office of the Secretary of State, a copy of which is attached hereto, as Exhibit "A".

Petitioner was advised that the Secretary of State could not extend the time, and that the only way that an extension could be secured was by petition to the Court and the obtaining of a Court Order.

Afterwards, on July 3, 1972, petitioner left for filing the application to get the name of Robert Hainsworth on the ballot as an Independent Candidate together with his Consent To Become a Candidate in the office of the Secretary of State.

Petitioner meets all qualifications to be an Independent Candidate for State Representative, District 86, except that he did not have signatures of qualified voters to his application numbering five per cent of the entire vote cast for Governor in such district at the last preceding general election, nor five hundred signatures to his application.

That petitioner had on prior occasions endeavored to get his name on the ballot as an independent candidate, but did not obtain enough signatures to his application, on prior occasions.

V.

Art. 13.07a, and Art. 13.08c, V.A.T.S. Election Code, were declared unconstitutional by Federal Court.

Art. 13.07A(3) provided in part: "If a candidate is unable to pay the deposit or filing fee as required * * * in lieu of payment he may file with his application a petition of voters, * * * and he shall not then be required to pay any deposit, fee or assessment as a condition for having his name printed on the ballot for either the primary election or the general election; * * *."

That some of the provisions of Art. 13.08c that were declared unconstitutional were more favorable to political party candidates than provisions of Art. 13.50 were to independent candidates, as for example, under Art. 13.08c:

A. Such petition could be circulated for 90 days preceding the deadline for filing;

B. There was no restriction to the number or class of voters that were eligible to sign the application of a

candidate of a political party. All of the registered voters of the territory were initially eligible to sign the application, and open to such candidate to obtain signatures;

C. The number of signatures of qualified voters required was 10 per cent of the entire vote cast for that party's candidate for governor in the last preceding general election in the territory (state, district, county or precinct, as the case may be) in which the candidate was running.

That some of the provisions of Art. 13.50, referred to above, applicable to independent candidates, are, as for example:

(A) Only 30 days are allowed to canvass for the required number of signatures to application of independent candidate;

(B) The number of eligible voters to sign the application of an independent candidate is restricted to those voters who did not participate in the general primary election or the runoff primary election of any party who had nominated, at either such election a candidate for the office for which the independent candidate is trying to become a candidate;

(C) The number of signatures required is five per cent of the entire vote cast for Governor in such district at the last preceding general election. Notwithstanding the foregoing provision, the number of signatures required for an application for any district, county or precinct office need not exceed five hundred.

It is alleged that because of the difference in the above provisions of the Articles of the Election Code of Texas that the equal protection of the laws under Section I,

of Amendment XIV, to the Constitution of the United States was not afforded to one who tried to become an independent candidate under the Election Code of Texas, as compared with one who tried to become a candidate by getting his name on the ballot of a political party by petition.

VI.

That by virtue of the following cases: Van Phillip Carter et al, v. Martin Dies et al, 321 F. Supp. 1358; Johnston et al, v. Bullock et al, 338 F. Supp. 355; and Bob Bullock et al, v. Van Phillip Carter et al, 31 L.Ed.2d 92, 92 S.Ct. ____; certain provisions of the Texas Election Code have been declared invalid and unconstitutional.

Further, it is alleged that as a result of one or more of the above cited cases that the Secretary of State of the State of Texas promulgated a schedule of primary filing fees or an alternative nominating petition, and that some of such are:

FILING FEES

Statewide Office	Reduced from - $1,000.00	to	$400.00
State Senator	Reduced from - 1,000.00	to	150.00
State Representative	Reduced from - 600.00 Maximum	to	100.00

NOMINATING PETITIONS

Statewide Office	Reduced from ten per cent of the entire vote of the State cast for that party's candidate for governor in the last preceding general election.	to	2,500 signatures
District, County, or Precinct Office	Reduced from at least ten per cent of the entire vote cast for that party's candidate for governor in the last preceding general election in the territory, (district, county or precinct, as the case may be) in which the candidate is running.	to	2% of the entire vote cast for that party's candidate for governor in the last preceding general election in the territory. In no event shall the number of signatures that are required be less than twenty-five (25) nor more than three hundred (300).

Approximately, 30 days granted to obtain signatures to nominating petitions, and submit to appropriate officer.

VII.

Although the above is a sample of the alleged schedule of filing fees and of alternative nominating petitions for

candidates, as promulgated by the Secretary of State, there has been apparently no relaxing of the Texas Election Code provisions, or promulgation by the Secretary of State of alternative nominating petitions with respect to independent candidates.

It is respectfully submitted that the promulgation of a fairer and smaller schedule of filing fees, and of alternative nominating petitions with respect to political party candidates, as set out above; while at the same time, not making any change in Article 13.50 of the Texas Election Code pertaining to independent candidates; makes for inequality of the laws in the State of Texas with respect to a candidate who seeks to get his name on the primary ballot of a political party by the nominating petition, and an independent candidate who seeks to get his name on the general election ballot by the nominating petition.

Instead of an independent candidate being required, only, to obtain signatures in number equal to 2% of the entire vote cast for any party's candidate for governor in the last preceding general election in the territory or district in which the independent candidate is trying to become a candidate, and not to exceed three hundred (300) in number, the independent candidate is still required to obtain 5% of the entire vote cast for governor in the last preceding general election in the territory, (district, county or precinct, as the case may be); but not to exceed five hundred (500) in number.

The provisions of the Election Code of Texas, Art. 13.50, V.A.T.S., as pertains to independent canditates are such that one who seeks to become an independent candidate and have his name placed on the general election ballot for November 7, 1972, as an independent candi-

date, is so disadvantaged and so discriminated against by the provisions of the Texas Election Code. Art. 13.50, V.A.T.S., that the independent candidate is denied the equal protection of the laws under Section I, of Amendment XIV, to the Constitution of the United States.

VIII.

Petitioner has no adequate remedy at law.

IX.

That unless the Secretary of State shall issue his instruction to the proper officer directing that the name of the petitioner shall be printed on the official ballot for the general election on November 7, 1972, in the independent column under the title of the office for which the petitioner is a candidate, the petitioner, as well as voters interested in casting their vote for the petitioner in the general election, will suffer irreparable damage.

Wherefore, petitioner prays for a preliminary injunction, and that:

1. The Court enjoin, suspend or restrain the enforcement of Art. 13.50 of the Texas Election Code, V.A.T.S., and in particular that provision which provides therein that in order for the name of a nonpartisan or independent candidate for a district office in a district composed of only one county or part of one county, to be printed on the official ballot in the column for independent candidates, the application shall be signed by five per cent of the entire vote cast for governor in such district at the last preceding general election, but not to exceed five hundred in number;

2. The Court enjoin and restrain the enforcement by the Secretary of State of any requirement of the Texas Election Code calling for a greater number of signatures

to a nominating petition of an independent candidate than that required of signatures to an alternative nominating petition of a political party candidate, as promulgated by the Secretary of State in 1972, for the primary elections in 1972, which alternative nominating petition requirements are set out in Paragraph VI, above;

3. The Court require the Secretary of State to issue instructions to the proper officer that the name of any independent candidate who has signatures to nominating petition, equal in per cent, or number, to those required on an alternative nominating petition of a political party candidate, as promulgated by the Secretary of State in 1972, be printed on the official ballot for the general election on November 7, 1972, in the column for independent candidates.

And petitioner further prays that jurisdiction be taken by a Three-Judge Court pursuant to 28 U.S.C.A. Sec. 2281 and 28 U.S.C.A. Sec. 2284.

And further that on hearing of this petition and application for a preliminary injunction, that the injunctive relief sought, be granted, and that a preliminary injunction be issued until final hearing can be had in the above matter; and that on final hearing said preliminary injunction be made permanent; and that the Court will grant such other and further relief, as to the Court may seem just in the premises, and costs of court.

Respectfully submitted,

/s/ ROBERT W. HAINSWORTH
Attorney for Petitioner
Alvin Building
3710 Holman Avenue
Houston, Texas 77004
Telephone 748-4922.

VERIFICATION

The State of Texas,)
)
County of Harris.)

Robert Hainsworth, being first duly sworn, on his oath states that he is the petitioner in the above and foregoing Petition For Preliminary Injunction, and that he has read the foregoing Petition For Preliminary Injunction, and knows the contents thereof, and that the facts stated therein are true to his own knowledge, except as to matters therein alleged which are based on information and belief, and as to those such matters he believes them to be true.

/s/ ROBERT W. HAINSWORTH
Robert Hainsworth.

Subscribed and sworn to before me this 23rd day of August, 1972.

H. G. CUNEY
Notary Public in and for Harris County, Texas.

My commission expires on the
1st day of June, 1973.

EXHIBIT "A"

July 3, 1972

REQUEST FOR EXTENSION OF TIME TO FILE APPLICATION TO GET NAME OF INDEPENDENT CANDIDATE ON BALLOT

TO THE SECRETARY OF STATE,
STATE OF TEXAS
AUSTIN, TEXAS.

Request is hereby made on this the 3rd day of July, 1972, for an extension of time in which to file Application to Have the Name of Robert Hainsworth placed on the official ballot for the general election to be held on the 7th day of November, 1972, as an Independent Candidate for the office of State Representative, District 86, in Harris County, Texas.

The reason for this request is that additional time is needed to get more signatures to the Application.

Respectfully submitted,

_____

Robert Hainsworth.

IN THE
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CIVIL ACTION NO. A-72-CA-111

ROBERT W. HAINSWORTH, Plaintiff

v.

BOB BULLOCK, Secretary of State, Defendant

DEFENDANT'S MOTION TO DISMISS

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the Defendant, Secretary of State Bob Bullock, and moves the Court to dismiss said Action for the following reasons, to-wit:

I.

To Dismiss the Action on the ground that this Court does not have jurisdiction and should not take jurisdiction over the subject matter of the Complaint as alleged.

II.

To Dismiss the Action because the Complaint fails to state a claim against Defendant upon which relief can be granted.

III.

To Dismiss the Action because Plaintiff's Petition fails to present a substantial federal question which has not

previously been resolved in the Supreme Court of the United States.

IV.

To Dismiss the Action because Plaintiff alleges in his Original Complaint that the rights here sought to be redressed are rights of citizens guaranteed by the *due process, equal protection,* and *privilege and immunities* clauses of the Fourteenth Amendment to the Constitution of the United States and Title 42, United States Code, Sec. 1983 and Sec. 1971, and therefore Plaintiff does not establish jurisdiction allowing this Court to Act on State matters such as this absent a showing of discriminatory activity because of race or Creed, etc., by state officials and this is not sufficiently alleged.

V.

To Dismiss the Action because some parts of the purported allegations and contents of the Original Complaint are vague and distorted and do not state a clear cause of action.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that this Honorable Court enter an Order dis-

missing the Complaint filed by Plaintiff herein and for such other relief to which Defendant may be justly entitled.

Respectfully submitted,

CRAWFORD C. MARTIN
Attorney General of Texas

NOLA WHITE
First Assistant Attorney General

ALFRED WALKER
Executive Assistant Attorney General

J. C. DAVIS
Assistant Attorney General

W. O. SHULTZ, III
Assistant Attorney General

SAM L. JONES, JR.
Assistant Attorney General

(CERTIFICATE OF SERVICE OMITTED IN PRINTING)

NOTICE OF MOTION

TO: Mr. Robert W. Hainsworth
Alvin Building
3710 Holman Avenue
Houston, Texas 77004

Please have notice that the undersigned will bring the above Motion on for hearing before the United States District Court for the Western District of Texas, San Antonio Division, San Antonio, Texas, on the 28th day of September, 1972, at 9:30 o'clock in the forenoon of that day or as soon thereafter at the convenience of the Court.

SAM L. JONES, JR.

THE JUDGMENT, ORDER OR DECISION IN QUESTION

The Memorandum Order and Judgment is set out in the Jurisdictional Statement in the Appendix thereto, at Pages 11 and 12.

Portions of the Memorandum Opinion deemed applicable to this case are set out in the Jurisdictional Statement in Appendix at Pages 13 through 18.

The Order Denying Motion For Rehearing is set out in the Jurisdictional Statement in the Appendix thereto, at Pages 19-21.

OTHER PARTS OF THE RECORD TO WHICH THE COURT'S ATTENTION IS DIRECTED

[55]

* * *

A political party candidate had no restrictions as to a person that he could canvass from, every voter was ripe for him to approach, but with respect to an independent candidate, I had to wait until after the Second Primary, and all those voters who had voted were not eligible to me to get their signatures for my application. I went to many places, and many people were willing to sign my application, and I had asked them because there is an oath that has been affixed to the application that reads, "Did you vote in any other primary, Republican or Democratic, in this 1972 year?" and

[56]

I was unable to get many signatures because those people had voted, and I was prescribed against getting that signature.

* * *

[57]

JUDGE THORNBERRY: Well, I will ask you this, Mr. Hainsworth, and it is a fair question, of course, what you are talking about when you talk about the person

who files their Petition to get on the Primary Ballot, all he is doing there is initiating an opportunity to compete with other candidates for quite a number of votes in order to get on the General Ballot. Now, it seems to me that your burden is just to compare the burden that is placed on you as a person who wants to be an independent candidate as against a

[58]

man not only who has to obtain not just the two per cent of the vote or 300 signatures, but he also has to get into a contest with a lot of other candidates for a lot of votes in order to get on the General Election Ballot. Now, is it fair to say that there is some comparison there?

MR. HAINSWORTH: Well, I think so, Your Honor, because one thing that should be observed is this, that many of those candidates, whether Republican or Democratic, who used either method of getting their names on the Ballot, whether it was by the filing of the fee or nominating Petition, they are the only candidate in that race, there is no opponent, they automatically get on the Ballot of the General Election without any kind of contest. There are innumerable instances of where a Democratic candidate and a Republic Party candidate get on the Georgia Election Ballot and don't have any opposition.

JUDGE THORNBERRY: You mean no opposition of any Primaries.

MR. HAINSWORTH: Yes, sir.

JUDGE THORNBERRY: But a lot of times they have pretty stiff opposition.

MR. HAINSWORTH: A lot of times they have, but in this case, an independent has to go to a

[59]

lot of expense and work in getting signatures, and then in addition the independent has this responsibility, the independent, when he gets his name on the Ballot in a General Election, it doesn't mean he is going to get elected, he just has an opportunity to get elected, and an independent doesn't have the political party organization that a Democratic Party candidate has or a Republican Party candidate has, and that equalizes.

JUDGE THORNBERRY: Well, if we could equalize opportunity to get elected, we would really be doing something, I have been through that process, I wouldn't say how many times, but I have never known how to equalize it. Do you have anything further now?